

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO : 500-06-000035-978

(Class Action)
SUPERIOR COURT

THE ELECTRONIC-RIGHTS DEFENCE COMMITTEE ERDC, corporation duly constituted, having its head office at 2363, de Rouen, in Montreal, province of Quebec, Canada, H2K 1M1, formerly acting and represented by Nancy Lyon and David Fennario its former designated members, hereby acting and represented by DAVID HOMEL, its designated member ;
Petitioner

vs.

SOUTHAM INC., corporation having offices at The Gazette, 250, Saint-Antoine West, in Montreal, province of Quebec, Canada, H3Y 1C2 and corporation the liabilities of which would have been assumed by other respondent **HOLLINGER CANADIAN PUBLISHING HOLDINGS INC** ,

and

CEDROM-SNI INC., corporation having its head office at 825, Querbes avenue, suite 200, in Outremont, province of Quebec, Canada, H2V 3X1;

and

INFOMART DIALOG LIMITED, corporation having a place of business at 4040, St-Hubert, Suite 201, in Montreal, province of Quebec, H2L 4A8 and corporation that has changed its name and amalgamated to become other respondent **CAN WEST INTERACTIVE INC** ;

and

SOUTHAM BUSINESS COMMUNICATIONS INC., corporation having a place of business at the

Montreal Gazette, 250, St-Antoine Street West, in Montreal, province of Quebec, H2Y 3R7 and corporation that has amalgamated with other respondent **SOUTHAM INC** the liabilities of which would have been assumed by other respondent **HOLLINGER CANADIAN PUBLISHING HOLDINGS INC ;**

and

MONTREAL GAZETTE GROUP INC – GROUPE MONTREAL GAZETTE INC, corporation having a place of business at 1010, Sainte-Catherine road West, suite 200 in Montreal, province of Quebec H3B 5L1

and

CAN WEST GLOBAL COMMUNICATIONS CORPORATION, corporation having a place of business at 1010, Sainte Catherine road West, suite 200 in Montreal, province of Quebec H3B 5L1

and

HOLLINGER CANADIAN PUBLISHING HOLDINGS INC, corporation having a place of business at Repertoires Scott, 3300 Cote Vertu boulevard suite 410 in ville Saint-Laurent, in Montreal , province of Quebec H4R 2B7

and

CAN WEST INTERACTIVE INC, corporation having a place of business at 1010, Sainte-Catherine road West, suite 200, in Montreal, province of Quebec H3B 5L1

Respondents

**AMENDED MOTION FOR AUTHORIZATION TO INSTITUTE
A CLASS ACTION, AND TO OBTAIN
THE STATUS OF REPRESENTATIVE
(a. 1002 and 1048 C.C.P.)**

PETITIONER ALLEGES :

1. Petitioner wishes to institute a class action on behalf of the natural persons forming part of the group, hereinafter described and of which Nancy Lyon, David Fennario and DAVID HOMEL are members, namely :

« All persons residing in Quebec or having resided in Quebec or residing in Canada, who have been freelance writers or creators for the SOUTHAM INC. daily newspaper The Gazette in Montreal, and whose articles or works have been reproduced without authorization or consent in the electronic database named INFOMART or in other electronic databases or in any form whatsoever and who have not obtained compensation for these illegal reproductions, as well as all assignees or transferees of copyright rights of these persons, or if these persons are deceased, their heirs or legal representatives. »

- 1.1. Petitioner has in fact existed as an active association of persons since March, 1996 at the time when Petitioner received preliminary indications that the right to the claim arose, and was formally and legally incorporated in 1997, under Part III of the Quebec Companies Act, as appears from copy of the articles of incorporation for Petitioner THE ELECTRONIC-RIGHTS DEFENCE COMMITTEE ERDC filed as exhibit P-1 ; DAVID HOMEL, professional freelance writer, translator, author, teacher and creator, residing and domiciled at 773 Davaar, in Montreal, province of Quebec, H2V 3B3, is a member of the said association and corporation; the interest of DAVID HOMEL is linked to the purpose for which the said Petitioner corporation has been incorporated, namely that of protecting the electronic copyrights of creators through legal action and other means, including informing freelancers of their rights, raising the level of awareness of the general public of the importance of copyright protection and working with like-minded organizations on the issue. The said DAVID HOMEL is also a member of the group of natural persons hereinabove described on behalf of which the Petitioner intends to bring a class action.

2. The facts on which DAVID HOMEL's claim is based, both personally and as the member designated by the Petitioner against the respondents, are as follows :

- 2.1. DAVID HOMEL has written articles and later on columns on a regular freelance basis for the daily newspaper The Gazette in Montreal owned by SOUTHAM INC. since at least 1987;

- 2.2. As appears from the annual report and documents emanating from respondent SOUTHAM INC. filed as exhibit P-2, the respondent SOUTHAM INC. is a

multi-million dollar Canadian corporation engaged in business in several activities, including information, daily and community newspapers, business-to-business information and trade and consumer shows. SOUTHAM INC. is Canada's largest publisher of daily newspapers, including the Vancouver Sun in British Columbia, the Calgary Herald in Alberta, the Ottawa Citizen in Ontario and the Gazette in Montreal.

- 2.3. DAVID HOMEL is a Canadian Citizen resident and domiciled in Montreal and has been a Canadian landed immigrant or Canadian resident or Canadian citizen legally residing in Canada at all times pertinent to this lawsuit ;
- 2.4. Until at least 1997, DAVID HOMEL did not have any written contract with SOUTHAM INC. His copyright agreement with The Gazette has always been an oral agreement until at least 1997 ;
- 2.5. Until 1997, DAVID HOMEL's agreement with The Gazette, owned by SOUTHAM INC., consists of leasing a one time right for one print publication in the daily newspaper «The Gazette» only and no other publication, advertising product or form of dissemination, through print or electronically or otherwise, he having retained all his other copyrights rights ;
- 2.6. As appears from the letter and proposed agreement dated March 1, 1996 from SOUTHAM INC. addressed to freelance writers filed as exhibit P-3, SOUTHAM INC. informed freelancer writers that it wished to implement a new policy modifying all agreements between freelance writers or creators and SOUTHAM INC. Under the new policy, SOUTHAM INC. would no longer do business with freelance writers or creators unless they signed a written contract transferring to SOUTHAM INC. a non exclusive license to reproduce or sublicense the reproduction of the material, in association with the name of the freelancer, by any means or technology, as part of the database of the relevant newspaper or newspapers or in products derived from it ;
- 2.7. SOUTHAM INC. asked freelancers in March, 1996 to sign said contract modifying their agreement with SOUTHAM INC. This many freelance writers refused to do because SOUTHAM INC. refused to modify the said proposed «freelance agreement» to pay them additional monetary compensation for publication in other Southam newspapers, and for the right to use their works on databases, CD ROM'S and other electronic products.
- 2.8. Following several meetings of many freelance writers and creators in March and April of 1996, freelancers mandated representatives to negotiate with SOUTHAM INC. on their behalf and on behalf of other Gazette freelance writers and creators to arrive at a fair contract and a solution to the copyright problem;
- 2.9. In 2000, SOUTHAM INC. though its employees at the Gazette, presented DAVID HOMEL with a document similar to the document filed as exhibit P-3 requesting him to sign it or else DAVID HOMEL would no longer get work

contracts for the Gazette, so DAVID HOMEL signed the document with conditions and modifications;

- 2.10. After research, enquiries and investigations, as appears from the INFOMART electronic database print out filed as exhibit **P-4**, there are more than thirty-seven thousand (37, 000) articles authored by freelance writers or creators which have been reproduced illegally — that is, without authorization or consent from the freelancers — by SOUTHAM INC. on the electronic database «INFOMART».
- 2.11. As appears from computer print out documents describing INFOMART filed as exhibit **P-5**, INFOMART is a business information service offering many services, including INFOMART Online, accessible with a computer and modem ; INFOMART on CD, providing Canadian news or business discs ; INFOMART Dialog Limited, providing electronic news and business services ; INFOMART on Demand, accessible with a telephone ; INFOMART Custom Search and INFOMART Direct.
- 2.12. Respondent CEDROM-SNI INC. is a company engaged in the business of information services, including the distribution of information on the electronic database «INFOMART».
- 2.13. As appears from the INFOMART electronic database print out filed as exhibit **P-6**, over 130 articles authored by one freelancer Nancy Lyon are illegally reproduced without authorization or consent on INFOMART with the cooperation and participation of respondent CEDROM-SNI INC. ;
- 2.14. As appears from the INFORMART electronic database print out illegally reproducing the full text of nine (9) of Nancy Lyon's articles filed as exhibit **P-7** and as appears from copy of the nine (9) corresponding articles originally printed in the newspaper The Gazette filed as exhibit **P-8**, the articles originally printed in the newspaper The Gazette authored by Nancy Lyon are illegally reproduced on the electronic database INFOMART.
- 2.15. As appears from the INFORMART electronic database print out filed as exhibit **P-19**, over 63 articles authored by DAVID FENNARIO, are illegally reproduced without authorization or consent on INFORMART with the cooperation and participation of respondent CEDROM-SNI INC. ;
- 2.16. As appears from the INFORMAT electronic database print out illegally reproducing the full text of 8 articles of DAVID FENNARIO filed as exhibit **P-20** and as appears from copy of the 8 corresponding articles originally printed in the newspaper The Gazette filed as exhibit **P-21**, the articles originally printed in the newspaper The Gazette authored by DAVID FENNARIO are illegally reproduced on the electronic database INFORMART ; Similarly, the articles of DAVID HOMEL , at least 86 articles, and the articles of the freelance writers of the group have been or are illegally reproduced on the electronic database INFOMART for many years ;

- 2.17. Following meetings between said representatives of The Gazette freelance writers and creators and respondent SOUTHAM INC., all negotiations with SOUTHAM INC. have been unsuccessful and SOUTHAM INC. has refused to do business with freelancers since April 1996, because they have refused to accept SOUTHAM INC.'s new policy and to sign the proposed freelance contract transferring unlimited additional print and electronic publication rights to SOUTHAM INC. without additional monetary compensation ;
- 2.18. As appears from copy of the demand letter dated April 24th, 1996 sent by Nancy Lyon's lawyer to SOUTHAM INC. filed as exhibit P-9, of which respondent SOUTHAM INC. is summoned to produce the original, in default of which secondary proof will be made by a copy, SOUTHAM INC. has since April 1996 refused to pay freelancers any compensation for their illegal acts in spite of numerous requests and the demand letter to SOUTHAM INC. ;
- 2.19. As appears from copy of an internal memo dated in 1993 from SOUTHAM INC. mentioning copyright violation and filed as exhibit P-10, of which respondent SOUTHAM INC. is summoned to produce the original, in default of which secondary proof will be made by a copy, SOUTHAM INC. has adopted and maintained an abusive and fraudulent conduct in the following way : SOUTHAM INC. has deliberately disregarded The Gazette's illegal infringement of copyrights owned by freelance writers or creators. With full knowledge of this illegal act, SOUTHAM INC. has calculated and chosen to maintain its «non negotiable» position to the effect of not paying the freelancers anything for the violation of said copyrights on electronic database. This SOUTHAM INC. has done knowing or should have reasonably known that Nancy Lyon, David Fennario and DAVID HOMEL and the group are financially disadvantaged and that SOUTHAM INC.'s The Gazette is the largest, and one of only two English language daily newspapers in the province of Quebec.
- 2.20. As appears from copy of letters from the two writers association, The Writers' Union of Canada (TWUC) and The Periodical Writers Association of Canada (PWAC), sent to SOUTHAM INC. at the Gazette, filed as exhibit P-11, of which respondent SOUTHAM INC. is summoned to produce the original, in default of which secondary proof will be made by a copy, SOUTHAM INC. was also advised by The Writers' Union of Canada (TWUC) and The Periodical Writers Association of Canada (PWAC) as early May 1996 of their copyright violation and still SOUTHAM INC. refused to remedy said violations ;
- 2.21. The loss by DAVID HOMEL and the group of freelancers of their business relationship with SOUTHAM INC, and the illegal reproduction without authorization or consent of articles on INFOMART causes DAVID HOMEL and the group to suffer considerable damages ;
- 2.22. DAVID HOMEL and freelancers regularly received a compensation from two hundred dollars (\$200) to nine hundred dollars (\$900) per article for each one

time print publication in the daily newspaper The Gazette, income from which DAVID FENNARIO is now deprived because of the acts of SOUTHAM INC. ;

- 2.23. The regular publication of DAVID HOMEL'S and freelancers' articles, in addition to contributing to their economic livelihood, supports their reputation and career as a professional journalist and allows them to receive other benefits, such as guest speaker engagements and maintenance of membership status in writers associations which provide professional advantages (contacts, press trips, guest speaker engagements, directory listings) essential to their career. It will be difficult for them to maintain these professional benefits because of the acts of SOUTHAM INC. ;
- 2.24. After research, enquiries and investigations, as appears in the information document concerning INFOMART with membership form from respondent CEDROM-SNI INC. filed as exhibit P-12, respondent CEDROM-SNI INC. sells articles on the electronic database to the general public in consideration of payment to CEDROM-SNI INC. of initial fees of one hundred and seventy-five dollars (\$175) per membership, plus additional fees of one hundred and twenty dollars (\$120) per year or twelve dollars (\$12) per month, plus connection fees of forty-five dollars (\$45) per hour plus telecommunication fees of fifteen dollars (\$15) per hour also giving the right to its members to make ten (10) copies of each said article which it does not have the legal right to do ;
- 2.25. The illegal resale of articles by SOUTHAM INC. and CEDROM-SNI INC. making the works accessible world-wide electronically causes DAVID HOMEL and the group to suffer ongoing and future losses by diminishing the value of their copyright rights, thereby interfering with or reducing the freelancers' opportunities for re-licensing their own works themselves for publication and for future profit in other markets and publications. In order to survive as a freelance writers, DAVID HOMEL and the group must control their own copyright rights , in order to re-assign and re-license the re-use of their works, through self-syndication, that is publishing the same works within the same time span in other publications in different geographical markets, or by recycling, that is updating stories to re-publish them months or years later in different markets. Only by syndication and recycling in other markets in addition to that of the daily newspaper The Gazette in Montreal, and anthologizing these articles into book collections, are freelancers able to earn adequate revenues to survive in their professions. For example, Nancy Lyon's book SCATTER THE MUD : A TRAVELLER'S MEDLEY published by NUAGES editions in 1995, contains fourteen (14) stories which she first published in The Gazette, as appears from copy of excerpts of SCATTER THE MUD : A TRAVELLER'S MEDLEY filed as exhibit P-13. Collecting and reprinting articles in book form is one example of how freelancers are able to «recycle» their own works ;
- 2.26. DAVID HOMEL and every member of the group claims as damages to compensate for loss of value of copyright rights the sum of at least six hundred

dollars (\$600) per article, subject to perfect or increase this amount according to the evidence that will be obtained during the hearing in the Superior Court ;

- 2.27. Respondents SOUTHAM BUSINESS COMMUNICATIONS INC. and INFOMART DIALOG LIMITED are companies engaged in the business of information services, including the distribution of information on the electronic database INFOMART;
- 2.28. The additional Respondents Montreal Gazette Group Inc Groupe Montreal Gazette Inc, Can West Global Communications Corporation, Hollinger Canadian Publishing Holdings Inc, Canwest Interactive Inc (hereinafter referred to as The Additional Respondents) are the legal successors of Respondents Southam Inc or Infomart Dialog Limited and have reproduced illegally and without authorization the copyrighted works of freelance creators forming the class or group represented by Petitioner and or The Additional Respondents have illegally unreasonably abusively modified and required new contracts for the works of freelance creators forming the class or group represented by Petitioner, the whole as more fully described in the following paragraphs;
- 2.29. In 2004, DAVID HOMEL received copy of a document emanating from respondents SOUTHAM INC, SOUTHAM BUSINESS COMMUNICATIONS INC and INFOMART DIALOG LIMITED dated February 25, 2004 entitled Amended Contestation and supported by an affidavit, hereinafter called the Amended Contestation filed by Petitioner as exhibit P-22 ;
- 2.30. In this Amended Contestation, paragraphs 58, 59, 61 and 62 allege in essence that through various sales, mergers, acquisitions and other corporate restructures or modifications, Respondents SOUTHAM and INFOMART DIALOG LIMITED have legal corporate successors that are in the business of taking over activities relating to the assets consisting of the newspaper The Gazette and its database INFOMART;
- 2.31. These corporate legal successors can be described as MONTREAL GAZETTE GROUP INC - GROUPE MONTREAL GAZETTE INC , CAN WEST GLOBAL COMMUNICATIONS CORPORATION, HOLLINGER CANADIAN PUBLISHING HOLDINGS INC, CAN WEST INTERACTIVE INC as per paragraphs 58, 59, 61 and 62 of the Amended Contestation;
- 2.32. As per paragraph 58 of the Amended Contestation, MONTREAL GAZETTE GROUP INC - GROUPE MONTREAL GAZETTE INC would have become the owner – publisher of the asset The Gazette, formerly the property of respondent SOUTHAM and has reproduced illegally and without authorization the articles or works of freelance creators forming the class or group represented by Petitioner and also has illegally unreasonably abusively modified and required new contracts for the works of freelance creators forming said class or group;

- 2.33. As per paragraph 58 of the Amended Contestation, CAN WEST GLOBAL COMMUNICATIONS CORPORATION is the parent company of the MONTREAL GAZETTE GROUP INC – GROUPE MONTREAL GAZETTE INC; CAN WEST GLOBAL COMMUNICATIONS CORPORATION is involved with MONTREAL GAZETTE GROUP INC – GROUPE MONTREAL GAZETTE INC in the business activities of publishing The Gazette, as appears from copy of a contract filed as exhibit P-23 ;
 - 2.34. As per paragraph of the Amended Contestation, HOLLINGER CANADIAN PUBLISHING HOLDINGS INC would have assumed the liabilities of SOUTHAM INC and Petitioner ERDC has some information that this assumption of liabilities would have been accomplished by private contract, copy of which Petitioner ERDC does not have at this time, the original contract being in the possession of Respondent HOLLINGER CANADIAN PUBLISHING HOLDINGS INC that it is hereby summoned to file to Court;
 - 2.35. As per paragraphs 59, 61 and 62 of the Amended Contestation, Petitioner ERDC modifies or adds to the designations of respondents SOUTHAM INC , SOUTHAM BUSINESS COMMUNICATIONS and INFOMART DIALOG LIMITED to reflect their changes in corporate structures or modifications;
 - 2.36. All Respondents, including the Additional Respondents, have contributed to illegally unreasonably abusively modify and require new contracts for the works of freelance creators forming the class or group represented by Petitioner as mentioned in Petitioner ERDC's original motion in 1997 and for said actions of Respondents, Petitioner ERDC requests the Court to annul said contracts;
3. The facts giving rise to personal claims by each of the members of the group against the respondents as well as The Additional Respondents are :
- 3.1. All the facts alleged in paragraph 2 including paragraphs 2.1 to 2.27 ;
 - 3.2. All the members of the group are freelance writers or creators for the same publication the daily newspaper «The Gazette» owned by the same respondent SOUTHAM INC. as well as The Additional Respondents ;
 - 3.3. All the members of the group have copyright rights on articles and works that they have authored ;
 - 3.4. All the members of the group have the same agreement with SOUTHAM INC. as well as The Additional Respondents and have not consented or authorized the reproduction of their articles beyond the one-time only print publication in The Gazette ;

- 3.5. All the articles of the members of the group are illegally reproduced on the same electronic database named INFOMART owned by respondent SOUTHAM INC. as well as The Additional Respondents;
 - 3.6. All the articles of the members of the group are illegally available worldwide by the illegal acts of the same respondents CEDROM-SNI INC., SOUTHAM INC. INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC as well as The Additional Respondents;
 - 3.7. As freelance writers or creators, all members of the group have retained their copyrights for themselves and have licensed only the right for one (1) time print publication in the daily newspaper The Gazette, thereby prohibiting SOUTHAM INC. as well as The Additional Respondents to reproduce works or articles in any form whatsoever, either in other newspapers or in any electronic database or other electronic product without the express written consent and authorization of the freelancers.
4. The composition of the group makes the application of articles 59 or 67 difficult or impractical because :
- 4.1. As appears from the list of known members of the group filed under exhibit P-14, DAVID HOMEL estimates the probable number of unknown members to eight hundred (800) or more and that the location of their residence or domicile is the province of Quebec or elsewhere in Canada ;
 - 4.2. It is impossible to contact or reach all members of the group as many are unidentified or have unknown addresses throughout the province of Quebec and Canada ;
 - 4.3. The number of members of the group and their widespread location throughout Canada is such that, without the procedure of this class action, their access to justice to exercise their claim would be seriously jeopardized, if not inexistent.
 - 4.4. Respondent SOUTHAM INC. as well as The Additional Respondents know or should reasonably know the number of freelance writers or creators that contribute content for its daily newspaper The Gazette ;
5. The identical, similar or related questions of law or fact between each member of the group and the respondent which Petitioner wishes to have decided by the class action are :
- 5.1. Do DAVID HOMEL and the group of freelance writers or creators own copyright rights on the articles they have authored?
 - 5.2. Did the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as The Additional Respondents through their illegal reproduction of articles

by DAVID HOMEL and the group on the electronic database named INFOMART violate copyright rights of DAVID HOMEL and the group ?

- 5.3. Does this violation entitle DAVID HOMEL and the group to civil remedies, including compensatory damages, accounts of receipts, revenues and profits, such as part of the revenues that the respondents have made from the infringement as is just and proper, and punitive or exemplary damages, judicial and extra-judicial legal fees, costs and disbursements, permanent injunction and other remedies according to the Law ?
6. It is expedient that the bringing of a class action for the benefit of the members of the group be authorized.
7. The nature of the recourse which the Petitioner wishes to exercise on behalf of the members of the group, is :
 - 7.1. The recourse is for infringement of copyright rights of freelance writers or creators by the illegal reproduction of their articles and works. The recourse seeks several civil remedies, including compensatory damages, accounts of receipts, revenues and profits, such as part of the revenues that the respondents have made from the infringement as is just and proper, punitive or exemplary damages, judicial and extra-judicial legal fees, costs and disbursements, permanent injunction and other remedies according to the Law ;
8. The conclusions sought by your Petitioner are :
 - 8.1. TO ORDER COLLECTIVE RECOVERY of the claims and damages of DAVID HOMEL with the claims and damages of each and every member of the group ;
 - 8.2. TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC as well as the additional respondents MONTREAL GAZETTE GROUP INC – GROUPE MONTREAL GAZETTE INC, CAN WEST GLOBAL COMMUNICATIONS CORPORATION, HOLLINGER CANADIAN PUBLISHING HOLDINGS INC and CANWEST INTERACTIVE INC (hereby collectively referred to as THE ADDITIONAL RESPONDENTS) jointly and severally TO PAY to the Petitioner the global sum of twenty-two million two hundred fifty-five thousand and two hundred dollars (\$22,255,200.00) AS COMPENSATORY DAMAGES and this, for the benefit of DAVID HOMEL and all members of the group, subject to perfect or increase this amount according to the evidence to be obtained during the hearing in the Superior Court ;
 - 8.3. TO ORDER the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS TO RENDER AN ACCOUNT of all accounting or financial data with respect to revenues from the illegal reproduction of articles authored by the group ;

- 8.4. TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY to the Petitioner a just and proper part in the amount of SIXTY-FIVE PER CENT (65 %) OF THE REVENUES that they have made and this, for the benefit of DAVID HOMEL and all members of the group, subject to quantify this claim after rendition of account ;
- 8.5. TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY to the Petitioner the global sum of eleven million one hundred twenty-seven thousand and six hundred dollars (\$11,127,600.00) AS PUNITIVE DAMAGES and this, for the benefit of DAVID HOMEL and all members of the group, subject to perfect or increase this amount according to the evidence at the hearing in the Superior Court ;
- 8.6. TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY ALL JUDICIAL AND EXTRA-JUDICIAL LEGAL FEES, COSTS AND DISBURSEMENTS, including all expert fees and costs and other fees and costs provided for in the Class Action Act, the whole in accordance with the law ;
- 8.7. TO ISSUE A PERMANENT INJUNCTION ORDER against the respondents SOUTHAM INC. and CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS to prohibit them from reproducing any articles authored by DAVID HOMEL or members of the group in the electronic database INFOMART or in any other electronic databases or any other form whatsoever ;
- 8.8. TO DECLARE NUL and VOID and TO RESCIND and TO ANNUL all written contracts with freelance writers or creators since 1996 illegally transferring to respondents SOUTHAM INC and CEDROM-SNI INC, INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC as well as to THE ADDITIONAL RESPONDENTS a non exclusive license to reproduce or sublicense material, including articles for the newspaper The Gazette;
- 8.9. TO AWARD THE WHOLE against the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally WITH INTEREST since the demand letter and post judgment interest according to the Courts of Justice Act, with the additional indemnity provided in article 1619 C.C.Q., with costs and disbursements of this lawsuit and any other just and equitable remedies that the Court may grant to the Petitioner or members of the group ;

- 8.10. TO ORDER the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO DEPOSIT THE SUM of thirty-three million three hundred eighty-two thousand and eight hundred dollars (\$33,382,800.00) with all other sums to be awarded AT THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF MONTREAL, and this, within thirty (30) days of the final judgment ;
- 8.11. IN THE EVENT THAT THERE REMAINS A BALANCE on the sums collectively recovered following the awards hereinabove requested :
- i) TO RESERVE the right and opportunity to the Petitioner to make representations on the manner of disposing of said balance ;
 - ii) TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY the sums hereinabove requested with interest at the legal rate since the demand letter and TO AWARD also the additional indemnity provided in article 1619 C.C.Q. ;
 - iii) TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY all judicial and extra-judicial fees, costs and disbursements, including all expert fees and costs and other fees or costs provided for in the Class Action Act.
9. The Petitioner THE ELECTRONIC-RIGHTS DEFENCE COMMITTEE ERDC with DAVID HOMEL acting as its designated member, requests that it be ascribed the status of representative.
10. The Petitioner also requests that its rights to amend this motion be reserved.
11. The Petitioner THE ELECTRONIC-RIGHTS DEFENCE COMMITTEE ERDC through its designated member DAVID HOMEL is in a position to represent the members adequately, for the following reasons :
- 11.1. DAVID HOMEL, a full-time professional freelance writer, translator, author, teacher and creator since 1977, has the will, determination, interest, availability, knowledge and experience necessary to represent fairly, competently and well the interests of the group.
12. The Petitioner suggests that the class action be brought before the Superior Court of the district of Montreal for the following reasons :

- 12.1. The offices of the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS are in Montreal ;
- 12.2. An important number of the members of the group as Petitioner are resident in the greater Montreal area ;
- 12.3. The cause of action and the agreement was concluded mainly in Montreal ;
13. The Petitioner files documents required by article 55 of the Rules of practice of the Superior Court, that is a draft notice to members filed as exhibit **P-15**, a draft judgment granting the motion filed as exhibit **P-16**, a copy of rules 52 to 59 of said rules of practice filed as exhibit **P-17** and copy of the Regulation respecting the percentage withheld by the Fonds d'Aide aux Recours Collectifs (FARC) filed as exhibit **P-18**.
14. The present motion is well founded in fact and in law.

WHEREFORE PETITIONER PRAYS :

THAT the present motion be granted ;

THAT the bringing of a class action be authorized, as follows :

That Petitioner THE ELECTRONIC-RIGHTS DEFENCE COMMITTEE through its designated member DAVID HOMEL is hereby authorized on its behalf and on behalf of all members of the group hereinafter described to institute a class action against SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as MONTREAL GAZETTE GROUP INC – GROUPE MONTREAL GAZETTE INC, CAN WEST GLOBAL COMMUNICATIONS CORPORATION, HOLLINGER CANADIAN PUBLISHING HOLDINGS INC, CAN WEST INTERACTIVE INC and other distributors for violation of the copyright rights of freelance writers or creators by illegally reproducing their works or articles in the electronic databases INFOMART or other electronic databases or in any form whatsoever ;

THAT THE STATUS OF REPRESENTATIVE be granted to THE ELECTRONIC-RIGHTS DEFENCE COMMITTEE ERDC and DAVID HOMEL as its designated member, for the purpose of bringing the said class action for the benefit of the following group of natural persons, namely :

« All persons residing in Quebec or having resided in Quebec or residing in Canada, who have been freelance writers or creators for the SOUTHAM INC. daily newspaper The Gazette in Montreal, and whose articles or works have been reproduced without authorization or consent in the electronic database named INFOMART or in other electronic databases or in any form whatsoever and who have not obtained compensation for these illegal reproductions, as well as all assignees or transferees of copyright rights of these persons, or if these persons are deceased, their heirs or legal representatives.»

THAT the principal questions of law and fact to be dealt with collectively be identified as follows :

Do DAVID HOMEL and the group of freelance writers or creators own copyright rights on the articles they have authored?

Did the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS through their illegal reproduction of articles by DAVID HOMEL and the group on the electronic database named INFOMART violate copyright rights of DAVID HOMEL and the group ?

Does this violation entitle DAVID HOMEL and the group to civil remedies, including compensatory damages, accounts of receipts, revenues and profits, such as part of the revenues that the respondents have made from the infringement as is just and proper, and punitive or exemplary damages, judicial and extra-judicial legal fees, costs and disbursements, permanent injunction and other remedies according to the Law ?

THAT the conclusions sought with relation to such questions be identified as follows :

TO ORDER COLLECTIVE RECOVERY of the claims and damages of DAVID HOMEL with the claims and damages of each and every member of the group ;

TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY to the Petitioner the global sum of twenty-two million two hundred fifty-five thousand and two hundred dollars (\$22,255,200.00) AS COMPENSATORY DAMAGES and this, for the benefit of DAVID HOMEL and all members of the group, subject to perfect or increase this amount according to the evidence to be obtained during the hearing in the Superior Court ;

TO ORDER the respondents SOUTHAM INC. and CEDROM-SNI INC. , INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS TO RENDER AN ACCOUNT of all accounting or financial data with respect to revenues from the illegal reproduction of articles authored by the group ;

TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY to the Petitioner a just and proper part in the amount of SIXTY-FIVE PER CENT (65 %) OF THE REVENUES that they have made and this, for the benefit of DAVID HOMEL and all members of the group, subject to quantify this claim after rendition of account ;

TO CONDEMN the respondents SOUTHAM INC. and CEDROM-SNI INC. , INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY to the Petitioner the global sum of eleven million one hundred twenty-seven thousand and six hundred dollars (\$11,127,600.00) AS PUNITIVE DAMAGES and this, for the benefit of DAVID HOMEL and all members of the

group, subject to perfect or increase this amount according to the evidence at the hearing in the Superior Court ;

TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY ALL JUDICIAL AND EXTRA-JUDICIAL LEGAL FEES, COSTS AND DISBURSEMENTS, including all expert fees and costs and other fees and costs provided for in the Class Action Act, the whole in accordance with the law ;

TO ISSUE A PERMANENT INJUNCTION ORDER against the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS to prohibit them from reproducing any articles authored by DAVID HOMEL or members of the group in the electronic database INFOMART or in any other electronic databases or any other form whatsoever ;

TO DECLARE NUL and VOID and TO RESCIND and TO ANNUL all written contracts with freelance writers or creators since 1996 illegally transferring to respondents SOUTHAM INC and CEDROM-SNI INC, INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC as well as to THE ADDITIONAL RESPONDENTS a non exclusive license to reproduce or sublicense material, including articles for the newspaper The Gazette;

TO AWARD THE WHOLE against the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally WITH INTEREST since the demand letter and post judgment interest according to the Courts of Justice Act, with the additional indemnity provided in article 1619 C.C.Q., with costs and disbursements of this lawsuit and any other just and equitable remedies that the Court may grant to the Petitioner or members of the group ;

TO ORDER the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO DEPOSIT THE SUM of thirty-three million three hundred eighty-two thousand and eight hundred dollars (\$33,382,800.00) with all other sums to be awarded AT THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF MONTREAL, and this, within thirty (30) days of the final judgment ;

IN THE EVENT THAT THERE REMAINS A BALANCE on the sums collectively recovered following the awards hereinabove requested :

- i) TO RESERVE the right and opportunity to the Petitioner to make representations on the manner of disposing of said balance ;
- ii) TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY the sums

hereinabove requested with interest at the legal rate since the demand letter and TO AWARD also the additional indemnity provided in article 1619 C.C.Q. ;

- iii) TO CONDEMN the respondents SOUTHAM INC., CEDROM-SNI INC., INFOMART DIALOG LIMITED and SOUTHAM BUSINESS COMMUNICATIONS INC. as well as THE ADDITIONAL RESPONDENTS jointly and severally TO PAY all judicial and extra-judicial fees, costs and disbursements, including all expert fees and costs and other fees or costs provided for in the Class Action Act.

THAT IT BE DECLARED that any member who has not requested his exclusion from the group be bound by any judgment to be rendered on the class action, in accordance with law;

THAT THE DELAY FOR EXCLUSION be fixed at thirty (30) days from the date of the notice to members and that at the expiry of such delay the members of the group who have not requested exclusion be bound by any such judgment ;

THAT IT BE ORDERED that a notice to the members be published on _____ in the following manner and form ;

THAT THE RECORD BE REFERRED TO THE CHIEF JUSTICE so that he may fix the district in which the class action is to be brought and the judge before whom it will be heard ;

THE WHOLE with costs to follow suit.

Montreal, this 25th day of June 2004

ME MIREILLE GOULET, LL. B., LL. M.
Attorney for the Petitioner THE ELECTRONICS-
RIGHTS DEFENCE COMMITTEE ERDC